

District Magistrate to make rules or give special orders consistent with the Code as to the distribution of work among such magistrates and benches. Now distribution of work is one thing, calling up a case from the court to which it is transferred for trial is quite different, and I cannot find that the Code anywhere empowers the district magistrate to pass on his powers of calling up cases from subordinate courts and redistributing them. Such a practice, even if governed by a special order, would not appear to be consistent with the Code and the mischief from such a practice appears when a simple case of this kind is handed about from court to court.

The distribution of business is, so far as I can ascertain, confined to district magistrates and cannot be exercised by a magistrate in charge of a sub-division.

The order of the magistrate directing that the senior honorary magistrate should distribute work among the other honorary magistrates is an order *ultra vires* and some other arrangement for distribution of work than this should be made; otherwise there is a risk of a case transferred by a senior honorary magistrate being declared null and void *ab initio*, being a trial without jurisdiction. Let the record be returned.

Record returned.

APPELLATE CIVIL.

Before Mr. Justice Muhammad Rafiq and Mr. Justice Piggott.

MATA PRASAD (APPLICANT) *v.* BARAN BARHAI (PROSECUTOR-PARTY)*.

Criminal Procedure Code, section 195—Sanction to prosecute—Id., et c.

Held that when sanction to prosecute has been granted or refused by a court under the provisions of section 195 of the Code of Criminal Procedure, only one appeal from such order will lie under that section. *Kanhai Lal v. Chhadammi Lal* (1) followed. *Muthuswami Mudali v. Veeni Chetti* (2) referred to

ONE Mata Prasad applied in the court of the Munsif of Gorakhpur for sanction to prosecute Baran Barhai, but sanction was refused. He then made a further application under clause

* First Appeal No. 5 of 1914 from an order of W. R. G. Mair, District Judge of Gorakhpur, dated the 17th of November, 1913.

(1) (1908) I. L. R., 31 All., 48.

(2) (1907) I. L. R., 30 Mad., 382.

1914

BAL KISHAN
v.
SIPAHJI LAL.

1914
May, 13.

1914

MATA
PRASAD
v.
BARAN
BARHAI.

(6) of section 195 of the Code of Criminal Procedure to the District Judge, who granted the sanction asked for. Baran Barhai appealed against this order to the High Court.

Munshi *Jang Bahadur Lal*, for the respondent, raised a preliminary objection. There was no appeal against the appellate order granting sanction. This was decided in the case of *Kanhai Lal v. Chhadammī Lal*, (1).

Babu *Piari Lal Banerji*, for the appellant :

In the present case this Court is being asked to revoke a sanction which has been granted and under the terms of section 195, Criminal Procedure Code. This is permissible. It is not the case of the High Court being asked to interfere with the order of a superior court *upholding* sanction. The upholding of such sanction would not be equivalent to the granting of sanction, and consequently there would not be under the terms of section 195, clause (6), any further remedy. The practice of this court not to allow a second appeal must be confined to cases in which the same party, who had availed himself of a right of first appeal and failed, claimed a further right of appeal. It could not apply to the case of a person who for the first time claimed the right of appeal given to him against the order granting sanction. The case reported in I. L. R., 31 All., 43, purports to follow the opinion of WALLIS, J., in *Muthuswami Mudali v. Veeni Chetti*, (2). But the opinion of WALLIS, J., was confined to the case of sanction being upheld by the appellate court and the party against whom it is granted claiming a further right of appeal. The case of *King-Emperor v. Serh Mal* (3), which is referred to in I. L. R., 31 All., 43, was also a case in which the first court had granted sanction and the appellate court upheld it. It could not be said that there was a practice of this Court not to allow an appeal under the circumstances of the present case.

MUHAMMAD RAFIQ and PIGGOTT, JJ.—These are three connected first appeals which raise substantially one single point. An application under section 195 of the Code of Criminal Procedure for the grant of sanction to institute certain prosecutions for the offence of giving false evidence under section 193

(1) (1908) I. L. R., 31 All., 43.

(2) (1907) I. L. R., 30 Mad., 382.

(3) Weekly Notes, 1908, 102.

of the Indian Penal Code was made in the court of the Munsif of Gorakhpur city and was dismissed by him. The party applying for sanction carried the matter to the court of the District Judge, as he was entitled to do, under clause (6), section 195, of the Code of Criminal Procedure, with the result that the District Judge passed an order granting the sanction. The parties against whom the sanction was granted have filed these three connected appeals in this Court. A preliminary objection is taken that under the provisions of section 195 of the Code of Criminal Procedure aforesaid it was not intended that the question of granting or withholding a sanction should be carried to a third court. There is clear authority of a bench of this Court in support of this objection in the case of *Kanhai Lal v. Ohhadammil Lal* (1), where the facts were precisely similar to those of the case now before us. We have been asked to reconsider this ruling both with reference to the decision of a Full Bench of the Madras High Court in *Muthuswami Mudali v. Veeni Chetti* (2), and to other cases referred to in the abovementioned ruling of this Court. So far as we are aware the reported decision of this Court has never been dissented from and has been accepted in this Court for the last five or six years. On the principle of *stare decisis* we do not think it expedient to reconsider that decision, or the arguments on which it was based. We hold accordingly that no appeal lies to this Court against the orders complained of and we dismiss each of the three appeals now before us with costs.

Appeal dismissed.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Tudball.
FAZAL HUSAIN (PLAINTIFF) v. MUHAMMAD SHARIF AND ANOTHERS
(DEFENDANTS).*

Pre-emption—Wajib-ul-arz—Custom—Evidence—Entry in wajib-ul-arz clear and un rebutted.

Where there is an entry in the wajib-ul-arz as to the right of pre-emption which is clear and distinct and there is no evidence to the contrary, the court

* Second Appeal No. 608 of 1913 from a decree of Durga Natt Joshi, District Judge of Azamgarh, dated the 4th of March, 1913, confirming a decree of Udit Narain Sinha, Subordinate Judge of Azamgarh, dated the 18th of November, 1912.

(1) (1908) I.L.R., 31 All., 48.

(2) (1907) I. L. R., 30 Mad., 382.

1914

MATA
PRASAD
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